

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 193
5335717

BETWEEN	BRENDA RANGIMARIE CHRISTIANSEN Applicant
AND	SEVANS GROUP (NZ) LIMITED Respondent

Member of Authority:	Alastair Dumbleton
Representatives:	Applicant in person No appearance for Respondent
Investigation Meeting:	9 May 2011
Determination:	10 May 2011

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Ms Brenda Christiansen applied to the Authority on 24 February 2011, asking it to investigate and determine a claim against the respondent Sevans Group (NZ) Limited that had arisen out of her employment and its termination. Her claim is that she was not paid the remuneration due under an employment agreement entered into with Sevans and was forced to resign her employment as a consequence. She claimed there had been a breach of the employment agreement in the circumstances.

[2] To remedy her problem Ms Christiansen claims under the Employment Relations Act 2000 to recover unpaid remuneration, compensation for her grievance and a penalty for the breach.

[3] Sevans was served at its registered office with a copy of Ms Christiansen's statement of problem and was subsequently served with a Notice of Investigation Meeting. The company did not respond to any communications or notices from the

Authority and did not attend the investigation meeting on Monday 9 May 2011 at 10am.

[4] The meeting proceeded on the basis that the Authority was satisfied Sevans had been served at the address for service, 4 Delphi Grove, Tuakau, 2021, given to the Companies Office when the company was incorporated in September 2010.

[5] At the meeting Ms Christiansen confirmed as correct the information she had given in considerable detail in her statement of problem and provided further information as requested by the Authority.

[6] I find from all of the information that Ms Christiansen was employed by Sevans Group (NZ) Limited as HR Manager, under terms and conditions of employment set out in a written employment agreement she signed in September 2010. The agreement was also signed by Mr Neil Mercer whose name appears as one of the directors of the company in an extract from the Companies Office file.

[7] The employment agreement provided that Ms Christiansen was employed from 4 October 2010 at a salary of \$120,000 per year, to be paid weekly into her bank account. She was also entitled to a car allowance of \$200 per month and payment of vehicle insurance premium up to \$500 per year. The agreement provided for notice of termination of four weeks, or payment to be made in lieu of that period.

[8] Soon after she commenced Ms Christiansen found she was not being paid salary each week. She was paid a sum of \$1,600 into her bank account, but only once during her employment

[9] Ms Christiansen provided copies of several email communications she had with Mr Mercer who was the Chief Financial Officer of Sevans Group. It is clear from them that the company pointed to lack of finance as the reason why it would not or could not pay Ms Christiansen, rather than anything to do with her performance or any question about the formation of an employment relationship.

[10] Eventually, shortly before Xmas 2010, Ms Christiansen emailed Mr Mercer and his co-director Mr Evans advising that without pay the job was unsustainable and that she would have to resign from it. She gave four weeks notice but offered to leave immediately if the company wished that. She provided to the company a spreadsheet setting out amounts she was owed by Sevans from the employment.

[11] Mr Mercer replied to the email with the advice that the company was on the verge of securing finance from overseas sources and that once the arrangements had been completed \$20 million would become available to Sevans. He promised “a big Xmas party” when the deals had been closed. About two days later on 15 December Ms Christiansen was advised by Mr Mercer that a new investor had been found and that finance would be raised from that source. She noted in her reply that this was a promise she had heard before.

[12] On 8 January 2011 by email Ms Christiansen gave the company ten days notice that she would take legal proceedings if the wages due to her were not paid. She attached a schedule of the amounts owed to her for each week of her employment, including vehicle allowance, vehicle insurance, Kiwisaver contributions and holiday pay. The total claimed as owing was \$21,251.16 net of tax but from which had been deducted the \$1,600 deposited to her account at the start of the employment.

[13] Mr Mercer replied immediately by email, advising that the amount due would be paid as soon as the funds became available to Sevans. He asked Ms Christiansen to reconsider her resignation as Sevans wanted her as part of its management team.

[14] After the period of notice given by Ms Christiansen had expired Mr Mercer sent a further email to Ms Christiansen advising that funds of US\$20m had been secured from a business partner and that the money was expected to be deposited in Sevan’s bank within two days. Ms Christiansen was asked to reconsider her resignation and was advised “we will be paying out the backpay to our staff as soon as the funds can be utilised.” Mr Mercer asked Ms Christiansen to let him know what her intentions were so that he could continue to work out the amount owed to her.

Determination

[15] I find in the circumstances it is established that Ms Christiansen has a personal grievance as a result of the company’s persistent failure to pay remuneration due under the express terms of the employment agreement. The grievance is either one of unjustifiable disadvantage or unjustifiable dismissal, the latter situation being termination by constructive dismissal. To remedy the grievance Ms Christiansen does not seek reimbursement of lost wages for any period after termination but does seek compensation for humiliation, distress and hurt feelings. The amount claimed of

\$5,000 is reasonable in the circumstances and I award it to Ms Christiansen pursuant to s 123(1)(c)(i) of the Act.

[16] The claim for reimbursement of unpaid wages, salary and allowances including holiday pay has been very carefully set out and calculated in a schedule and I find this claim too is made out. Sevans Group (NZ) Limited is ordered to pay Ms Christiansen a total of \$21,151.16 net, pursuant to s 131 of the Act. This amount includes Kiwisaver deductions, from employer and employee, vehicle allowance and vehicle insurance, and also holiday pay calculated at 8% of total gross earnings.

[17] Interest at 8.4% per annum is to be paid from 7 January 2011 until the amount of \$21,151.16 has been paid in full, pursuant to clause 11 of Schedule 2 of the Act.

[18] It is appropriate for a penalty to be ordered as well against the company, as there was a clear and continuing breach of the employment agreement by the company, committed with full knowledge of its obligations under the written contract. In spite of notice being given of the claim and the resignation of Ms Christiansen, the company still did nothing to rectify that breach. I award a penalty of \$4,000 which is to be paid to the Crown, pursuant to ss 133 and 134 of the Act. Had the breach occurred after 1 April this year the maximum penalty for consideration would have risen to \$20,000, double the amount that applied when the breach occurred at the end of 2010 and early 2011.

Determination

[19] Sevans Group (NZ) Limited is ordered to pay to Ms Brenda Christiansen the amounts detailed above.

A Dumbleton
Member of the Employment Relations Authority